



Workers' Compensation Referrals

- non-compliance
- failure to report
- fraud

Overview

1. non-compliance & failure to report
 - a) elements
 - b) reviewing the file
 - c) resolution
2. fraud
 1. elements
 2. reviewing the file
 3. resolution
3. venue
4. plea recommendations
5. statute of limitations
6. resources

types of offenses

non-compliance (NC) & failure to report injury (FTR)	fraud
 deferred prosecution agreement	 charges

non-compliance

- elements
 - employer
 - employees
 - knowingly fail to insure work comp liability

non-compliance: elements

- “employer”
 - any person or entity using service of another **for pay**
 - 5+ employees for regular businesses
 - 1+ employees for construction businesses
 - “construction” - erect, demolish, alter, or repair improvements

non-compliance: elements

- “employee”*
 - person in service of employer

*note: The definition of “employee” does not require payment. However, to be an “employer,” the service of another must be for pay. Consider a business with 1 paid employee and 4 unpaid interns.

non-compliance: elements: “employee”

includes:

- pretty much everyone in service of employer
- family members
- part-timers
- illegal aliens
- minors
- interns, paid and unpaid

excludes:

- volunteers for religious, charitable, or relief organizations
- owner/operators of motor vehicles leased or contracted by for-hire motor carriers e.g. tow trucks, trucking, taxi cabs
- farm labor
- domestic servants in a private home
- family chauffeurs
- occasional labor performed on a private household
- prison labor
- referees
- see section 287.090 for complete list

non-compliance

- knowingly fail to insure work comp liability
 - knowingly means awareness of circumstance i.e. Δ was aware of no work comp insurance
 - NOT knowledge that business is legally required to have work comp insurance*

*however, this is one of reasons we offer a DPA to first-time offenders

non-compliance: defenses

“I got bad advice.”	request contact information and follow-up interview with bad advice giver
“Those were independent contractors.”	investigate nature of work relationship e.g. 20 factors
“I thought I had it.”	seek evidence to contrary

non-compliance

- procedure
 - review red folder & attached docs
 - referral sheet
 - referral results
 - case tracking sheet
 - referral memo
 - probable cause statement
 - investigative summary
- DOR info
- SOS info
- **DES info**
- insurance info, including NCCI and prior policies
- transcripts of interviews
- estimated annual premium worksheet
- work comp claims
- medical records for injured workers

non-compliance

- accept
- request more investigation
 - interview worker, insurance agent, etc.
 - obtain documents e.g. insurance info, DES audit, payroll etc.
- decline



MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
FRAUD AND NONCOMPLIANCE UNIT

REFERRAL OF NONCOMPLIANCE

RECEIVED

AUG 29 2012

MO. ATTORNEY GENERAL

Investigator(s) John F. Gillam	
Suspect Danny Wier d/b/a Dan Wier Painting	Case Number 2012-0554

- ☒ This is an allegation of noncompliance under Chapter 287.128.7 RSMo which alleges that the suspect failed to insure their liability pursuant to this chapter.
- ☒ The alleged violation is in St. Louis County, Missouri.
- ☒ Statute of limitations is December 12, 2014.
- ☒ Estimated annual premium is \$3,339.02.
- ☒ Name of business, suspect, date of birth, social security number, telephone number, most current address.
- ☒ Summary of complaint and investigation.
- ☒ Number of employees reported to Employment Security from latest noncompliant month is: 3.
- ☒ Insurance information.
- ☒ Registered with Secretary of State's Office? Yes ☒ No ☐
- ☒ Alleged injured employee: Yes ☐ No ☒
- ☐ Refer case to: ES ☐ DLS ☐ IRS ☐ DOR ☐ SSA ☐
- Other:

Reviewed by (initials/date):

Supervisor: SA 8-27-12

Chief Adm.: BK-08-28-12

Chief of Op: DL 8-29-12

Director: DL 8-29-12

Attorney General's Office Use Only

Date: 1-21-14 ^{JR} ☒ Case Accepted ☐ Case Declined ☐ Additional Investigation Required

Comments: _____

failure to report

- elements (section 287.380)
 - within 30 days of knowledge of injury
 - employer must file with Division of Work Comp
 - full and complete report of injury or death to any employee
 - * injury must require more than first aid
- procedure
 - same as NC

deferred prosecution agreement

- private contract between AG and employer
- terms
 - admission of liability; must be “knowingly”
 - payment terms
 - waiver of rights
 - speedy trial
 - statute of limitations
 - admissibility of DPA
 - confidentiality

first time offenders: DPA v. charges

- avoided significant insurance costs e.g. more than \$25k/year
- knowledge of requirement
- risk of occupation
- number and significance of injuries during non-compliance
- refusal to pay injured worker's medical bills and/or termination of injured worker
- lengthy non-compliance period
- failures to report injuries

fraud

- false claim
- false statement
- false certificate
- BONUS: premium fraud

false claim § 287.128.1

- elements:
 - knowingly present or cause to be presented
 - any false or fraudulent claim for the payment of benefits
 - pursuant to a workers' compensation claim
- class D felony
- special fine of up to \$10,000 or double the value of the fraud, whichever is greater

false claim § 287.128.1

- issues:
 - may be difficult to prove a negative i.e. that the defendant was not injured in the way claimed
 - a false claim may also be a false statement, but is more narrow in that it only refers to the claim
 - venue is proper where false claim issues or where it is filed, the Division of Workers' Compensation in Cole County

false statement § 287.128.3(6)

- elements
 - knowingly make or cause to be made
 - any false or fraudulent **material** statement or **material** representation
 - for the purpose of obtaining or denying any benefit
- class A misdemeanor
- special fine of up to \$10,000

false statement § 287.128.3(6)

- issues:
 - identify and isolate the exact false statement and your proof that the statement is false
 - “material” means a natural tendency to influence the person to whom it’s made to take action with regard to work comp claim, but does not require actual reliance on false statement - See *State v. Barnes*, 942 S.W.2d 362 (Mo. banc 1997).

false certificate § 287.128.5

- elements
 - prepare or provide
 - an invalid certificate of insurance
 - as proof of workers' compensation insurance
- class D felony
- special fine of up to \$10,000 or double the value of the fraud, whichever is greater

false certificate § 287.128.5

- issues:
 - proving who delivered the certificate
 - proving certificate was invalid
 - showing knowledge of invalidity

premium fraud § 287.128.6

- elements:
 - knowingly misrepresent any fact
 - in order to obtain workers' compensation insurance at less than the proper **rate**
- class A misdemeanor
- no special punishment

premium fraud § 287.128.6

- issues:
 - “rate” is ambiguous
 - insurance premiums are based on estimates for the coming year, and it may be hard to prove that an estimate was a knowing misrepresentation.

venue

- where any element of the offense occurs
 - consider where false statements are uttered and where they are received
- St. Louis County
 - where charges are deemed appropriate, refer case
 - where DPA is deemed appropriate, retain case
 - where PA declines, prefer we not circumvent
- Cole County
 - refer all cases requesting return upon declination within time period

statute of limitations

- § 287.128.11
 - within **3** years
 - of discovery of the offense by
 - an aggrieved party or
 - a person who has a legal duty to represent an aggrieved party and who is not a party to the offense, which = attorney general or the prosecuting attorney having jurisdiction to prosecute the action.
 - courts interpret this widely; rule of lenity favors Δ
- **BEST PRACTICE:** try to file charges within 3 years of occurrence